THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23572 of 2006

17.112006

Between:

M/s.Transworld Garnet India Private Limited,
Having its Project Office at Dhandi Street, C.B.Road,
Srikakulam, represented by its Project Manager
Sri K.P.Reddy, S/o.Late Sri K.V.Reddy

… Petitioner

AND

The Secretary to Government of Andhra Pradesh,
Department of Industries and Commerce, Secretariat
Hyderabad and another

… Respondents

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ORDER:

The petitioner is a company incorporated under the Indian Companies Act, 1956. It was granted mining lease for Garnet for an extent of 95.085 hectares in survey No.1042 of Srikakulam Village on the banks of Nagavalli River near Balaramapuram Village of Srikakulam District. When the second respondent issued notification inviting expression of interest from the Joint Venture (JV) participants, to exploit heavy mineral beach sands in Gara Mandal over an extent of 95.085 hectares and 673.180 hectares granting mining lease, the petitioner filed W.P.No.19668 of 2006, assailing the said notification, *inter alia* contending that they are already applied for lease of ilmenite, that without considering their application, the application of the second respondent or its Joint Venture (JV) cannot be considered for grant of lease for ilmenite and that under Rule 24(4) read with (5) of Mineral Concession Rules, 1960 (the Rules, for brevity), they have a right to be notified of the fact of availability of another mineral and they have further right to have applied for whole part of area held under mining lease, under subrule (4) of Rule 24 of the Rules. This Court, at the stage of preliminary hearing, after hearing the learned Counsel for the petitioner and learned Assistant Government Pleader for Industries, Mines and Geology and learned Standing Counsel for Andhra Pradesh Mineral Development Corporation (APMDC), disposed of the said writ petition after referring to the relevant subrules of Rule 24 of the Rules, in the following manner.

> Though the above rule does not confer any right on the existing mining lessee in absolute terms, it certainly casts a

> duty on the State Government to notify the fact of an application for mining lease for mineral or minerals not specified in the existing mining lease. To that extent, the petitioner company is entitled for a notice under Section 24(1) of the Rules. This position is not seriously disputed nor denied. …… …… *In limine*, therefore, the first respondent is directed to notify the petitioner company, as and when the application made by APMDC for ilmenite and heavy mineral beach sands is taken up for grant of mining lease. The writ petition, with the above observations, is accordingly dismissed. No costs.

The first respondent has now issued a memo No.1475/M.III/2006, dated 29.9.2006, calling upon the petitioner to show cause as to why the Government shall not take action on the proposal submitted by second respondent for grant of mining lease for exploitation of beach sand other than Garnet i.e., automic minerals. Aggrieved by the same, the petitioner again filed the instant writ petition.

The matter was initially listed on 13.11.2006 and the learned Assistant Government Pleader for Industries was directed to get instructions in the matter. Today, preliminary arguments are heard.

Learned Counsel for the petitioner submits that in the impugned notice, the Government has already come to the conclusion that the petitioner is not eligible for getting mining lease for ilmenite without even issuing proper notice under Rule 24(4) and without even considering the limited right of the petitioner under subrule (5) of Rule 24 of the Rules. **Opposing** the writ petition, learned Government Pleader for Industries and learned Standing Counsel for second respondent submit that the petitioner has no right to seek mining lease or extension of lease for ilmenite as it is not newly discovered mineral. According to them, even at the stage of granting lease in favour of the petitioner in June 2002, the petitioner was very much aware that the beach sand contains mineral like ilmenite, rutile, leucoxene, zircon, sillimanite and monazite and, therefore, the petitioner cannot claim any preferential right under subrule (5) of Rule 24 of the Rules. Learned Government Pleader however submits that though the impugned order is styled as show cause notice, the same may be treated by the petitioner as one under subrule (4) of Rule 24 of the Rules, and submit explanation as well as application under Rule 24(5) of the Rules, which shall be considered by the Government of Andhra Pradesh.

There is no denial that at present either the petitioner or the second respondent do not have the necessary clearance from Government of India in Ministry of Automic Energy (Working of Mines, Minerals and Handling of Prescribed Substances) Rules, 1984. Such a clearance is a must as ilmenite is one of the prescribed substances

under Automic Energy Act, 1962. Therefore, it will be to premature to come to any conclusion as to the right of the second respondent or the alleged preferential right of the petitioner on ilmenite in the beach sands of Nagavali River, in the first instance it is for the first respondent to consider the matter. Now that the impugned show cause notice is treated as a notice under Rule 24(4) of the Rules, the petitioner is given liberty to submit explanation/application to the Government of Andhra Pradesh within a period stipulated in subrule (5) of Rule 24. In such an event, the first respondent shall consider the application/explanation and take appropriate decision in accordance with the Rules governing the working of mines and minerals of prescribed substances under law regulating automic energy in India. This Court makes it clear that while deciding the matter, the first respondent should not in any manner be influenced by any of the observations made herein above.

The writ petition, with the above observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO,J**)

November 17, 2006.

NOTE:

Issue order copy by

23.11.2006.

(By order)

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